HON'BLE DR. JUSTICE G. YETHIRAJULU

W.P.No. 2477 of 2000

DATED: 19-12-2007

Between:

M/s Majoor Chap Bidi Manufacturers rep by its Manager, Sri G. Ravinder.

…… Petitioner

and

The Regional Provident Fund Commissioner,
Sub-Regional Office, Nizamabad, Nizamabad District.

…….. Respondent

HON'BLE DR. JUSTICE G. YETHIRAJULU

W.P.No. 2477 of 2000

ORDER:

This writ petition has been seeking Writ of Certiorari by way of quashing the order, dated 27-05-1999 passed by the Employee Provident Fund Appellate Tribunal directing the petitioner to pay back wages @ 12% per annum for the period from 01-10-1985 till the date of actual payment, after calling for the records.

2. The facts, in brief, are that under Section 1 (3) (b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act'), a notification was issued on 17-05-1977 bring the Beedi industry under the purview of the Act. Thereupon, the Beedi Manufacturers' Association filed a batch of writ petitions before the Supreme Court of India challenging the said notification. Initially, stay was granted in the said writ petitions, but, ultimately, the writ petitions were dismissed on 25-09-1985. Thereafter, the Central Government constituted a tripartite committee for implementation of the provident fund scheme in respect of Beedi industries. The recommendations of the tripartite committee were that the employees' share of contributions for the period from June, 1977 to September, 1985, in the above background, was to be exempted unless and otherwise the employees and employers themselves come forward to pay the past contributions in lump sum or in easy installments. The waiver of employees' share was subject to condition that the employer shall pay the entire amount of contribution payable by themselves immediately and, if the amount is being remitted in installments already granted, such amount shall be paid in full on or before 31-03-19990. There is no dispute that the Beedi factory had complied with the recommendations of the tripartite committee constituted by the Central Government by depositing the employers' share of provident fund. But, thereafter, it appears, the

petitioner exercised his power vested under Section 14-B of the Act for the purpose of collecting damages for the period of stay granted by the Supreme Court. It is the case of the petitioner that he had paid 12% interest against the employees' share during the said period of stay to the members and, therefore, he is entitled to collect the damages for the said period. Aggrieved by the same, the petitioner had approached the Employees Provident Fund Appellate Tribunal and filed an Appeal under Section 7-I of the Act. The same was disposed of on 27-05-1999 by holding that the penalty of 12% shall be imposed till the date of actual payment. Being aggrieved by the said order, the petitioner filed the present writ petition by contending that he is not liable to pay any contribution for the period from 01-09-1978 to 30-09-1985, which was paid on or before 31-03-1990.

3. It is an undisputed fact that a tripartite committee is constituted after the Judgment of the Supreme Court recommended arrears of contribution payable by the employers shall be paid on or before 31-03-1990. It is the contention of the petitioner that since no interest has been stipulated by the committee for the payment of arrears of contribution on or before 31-03-1990, the petitioner is not liable for any damages as mentioned by the Tribunal. In the order of the Tribunal, it is specifically mentioned that no penalty shall be imposed on the employer for the arrears of contribution up to 30-09-1985. But it failed to mention that no penalty shall be imposed for the said amount if paid on or before 31-03-1990.

4. The learned counsel for the respondent submitted that so far as the contribution from 01-10-1985 is concerned, it does not come within the purview of the proceedings mentioned above and as it is a fresh period in respect of which the employer is bound to pay the contribution within the period stipulated under the Act and when such contribution is not made within such stipulated period, the Act mandates that they are liable to pay the damages for the delay caused

in payment of the contribution.

5. In the light of the above circumstances and in the light of the clarification given in respect of the order passed by the Appellate Tribunal, the petitioner is not entitled to any relief in this writ petition.

6. Hence, the Writ Petition is disposed of by mentioning that the petitioner is not liable to pay any penalty or damages for the contribution payable from 19-07-1980 to 30-09-1985, which was paid on or before 31-03-1990. The petitioner is liable for damages only in the event of the delay caused from
01-10-1985. It is also clarified as mentioned by the Tribunal that the defaults of 1 to 5 days shall not be treated as default and the penalty shall not be imposed on such defaults. No order as to costs.

DR. G. YETHIRAJULU, J

Date:19-12-2007
YCR